IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 3749 OF 2005
IN
CRIMINAL APPEAL NO. OF

The State of Maharashtra .. Applicant

Vs.

Sajid @ Pana Moiddin Shaikh .. Respondent

Ms. A.S. Pai, APP for applicant-State.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.

Date : January 25, 2006.

P.C.:

1. Heard the learned APP. The respondent-accused came to be acquitted by the learned Additional Sessions Judge, Gr. Bombay in Sessions Case No.907 of 2002 from the offences punishable under Sections 363, 366 and 376 of IPC. The said order of acquittal dated 18/1/2005 is sought to be challenged by the State by way of an appeal and hence this application for leave to appeal under Section 378(3) of Cr.P.C.

2. The learned Addl. Sessions Judge has recorded a finding that the charge of kidnapping was not proved and more particularly when the alleged victim Nasma Yakub Memon had accompanied the respondent on her own will and they had booked a hotel room where the offence of rape was alleged to have taken place. The learned Addl. Sessions Judge recorded a finding that the sexual intercourse between the parties was by

consent of the girl. This finding on both the issues is well reasoned and we do not find any scope for its reconsideration.

3. As far as the age of the girl is concerned, it has been noted that the birth certificate at Exh.21 was placed by the girl during her depositions before the trial court and she was shown to have been born on either 3/4/1984 or 5/4/1984. The incident had taken place on 12/1/2002 and thus, on the date of incident she was about 17 years and 9 months of age. In her oral depositions before the trial court she stated that she was 17 years of age in the year 2002.

4. Thus, on all counts the order of acquittal passed by the learned Addl. Sessions Judge does not call for reconsideration in an appeal by this court and hence there is no case made out to grant leave to appeal under Section 378(3) of Cr.P.C.

5. Leave is hereby refused.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**